

PT 02-48

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

MIDWEST COMMUNITY
REAL ESTATE CORPORATION,
APPLICANT

v.

STATE OF ILLINOIS
DEPARTMENT OF REVENUE

Nos: 98-PT-0022
98-PT-0035
P.I.N.S: 22-29-402-020, *et al.*
(See "Appendix No. 1," attached)

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Edward Green of Foley & Lardner on behalf of the Midwest Community Real Estate Corporation (hereinafter the "applicant").

SYNOPSIS: These consolidated proceedings raise the very limited issue of whether or to what extent the properties identified by the Parcel Index Numbers shown on the attached Appendix No. 1 (hereinafter collectively referred to as the "subject properties") were "actually and exclusively used for charitable or beneficent purposes," as required by Section 15-65 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.* during any or all parts of the assessment years shown on Department Ex. No. 1.

The underlying controversies arise as follows:

Applicant filed documentation seeking real estate tax exemptions for the subject properties with the appropriate county assessing authorities,¹ which reviewed applicant's

1. For details about the documentation and recommendations pertaining to each individual property, *see*, Dept. Group Ex. Nos. 2, 4.

documentation and made various recommendations² to the Illinois Department of Revenue (hereinafter the “Department”). (Dept. Group Ex. No. 2; Dept. Group Ex. No. 4, Doc B). The Department reviewed all of these recommendations and issued its initial determinations in this matter, all of which denied the requested exemptions due to lack of exempt use.³ (Dept. Group Ex. No. 3, Docs. A through G; Dept. Group Ex. No. 4, Doc. C).

Applicant filed requests for hearing as to all of these denials and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that the initial determinations in these matters be modified as to some of the subject properties but affirmed as to others. In support of these recommendations, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

A. General Considerations

1. The Department's jurisdiction over these matters and its positions therein are established by the admission of Dept. Group Ex. Nos. 2, 3, 4.
2. The Department's position in these matters is that none of the subject properties have been proven to be in exempt use. Dept. Group Ex. No. 3, Docs. A through G; Dept. Group Ex. No. 4, Doc. C.

2. In the interest of brevity, the substance of those recommendations is set forth in the attached Appendix No. 2.

3. In the interest of brevity, the substance of those determinations is set forth in the attached Appendix No. 3.

3. The subject properties are described as follows:

Common Name	Corresponding P.I.N.(S)	Improvement Description
Family Medical Clinic ("FMC")	22-29-402-020	1 story, 20,129 sq. ft. medical clinic
Wilmington Health Care Center ("Wilmington")	17-36-400-042	1 story, 7,500 sq. ft. medical clinic
Silver Cross Family Care Center/Homer Clinic ("Homer")	05-12-101-017	1 story, 7,500 sq. ft. medical clinic
Essington Place ("Essington")	06-02-401-002	2 story, 38,676 sq. ft. medical clinic
New Lennox Medical Center ("NLMC")	08-15-314-020 08-15-314-021 08-15-314-006 08-15-314-007	1 story, 15,931 sq. ft. medical clinic
Medical Arts Building ("MAB")	07-11-201-034	2 story, 42,299 sq. ft. medical clinic

Applicant Ex. Nos. 3; 14; Tr. pp. 79, 171, 196, 239-240.

4. Applicant is an Illinois not-for-profit corporation organized for purposes of holding title to health care facilities operated by its affiliate, Silver Cross Hospital (hereinafter "Silver Cross"). Applicant Ex. Nos. 5, 6.
5. Silver Cross's main hospital facility has been exempted from real estate taxation pursuant to the Departmental determination in Docket No. 93-99-209. Dept. Group Ex. No. 2.

6. Applicant obtained ownership of the subject properties by means of the following instruments:

PROPERTY	INSTRUMENT
FMC	<ul style="list-style-type: none">• Warranty dated December 3, 1987
Wilmington	<ul style="list-style-type: none">• Warranty Deed dated December 23, 1985
Homer	<ul style="list-style-type: none">• Quit claim deed dated May 12, 1987
Essington	<ul style="list-style-type: none">• Warranty deed dated August 11, 1993
NLMC	<ul style="list-style-type: none">• P.I.N.S 08-15-314-020 & 08-15-314-021 – Trustee’s deed dated September 18, 1989;• P.I.N: 08-15-314-006 – Warranty deed dated September 18, 1989;• P.I.N. 08-15-314-007 – Warranty deed dated February 9, 1990
MAB	<ul style="list-style-type: none">• Warranty deed dated December 23, 1985

Applicant Group Ex. Nos. 14, 16, 17, 18, 19, 20.

7. All of the subject properties are designed to be fully or partially used as satellite facilities for Silver Cross Hospital. Silver Cross does not, however, actually utilize all of the available space in all of the subject properties on a full time basis. Tr. p. 127.

B. Use of FMC

1. Silver Cross is entitled to occupy all of the improvement space within the FMC pursuant to the terms of a lease between itself and applicant. Applicant Group Ex. No. 20.
2. None of the improvement space within the FMC is leased to any entity except Silver Cross. *Id.*

3. Silver Cross provides various health care-related services to area residents at the FMC. *Id.*
4. Some, but not all, of the physicians who provide these services are Silver Cross employees. Others are independent physicians, not employed by Silver Cross, who utilize, on a timeshare basis, the treatment rooms and other facilities that Silver Cross makes available at the FMC. *Id.*
5. Silver Cross physicians accounted for 200.25 of the 232.25 (or 86%) of the total weekly service care hours provided at the FMC during 1996. The remaining 32 hours (or 14%) were provided by independent physicians engaged in the private practice of medicine. *Id.*

C. Use of Wilmington

1. Silver Cross is entitled to occupy all of the improvement space within Wilmington pursuant to the terms of a lease between itself and applicant. Applicant Group Ex. No. 17.
2. None of the improvement space within Wilmington is leased to any entity except Silver Cross. *Id.*
3. Silver Cross provides various health care-related services to area residents at Wilmington. *Id.*
4. Some, but not all, of the physicians who provide these services are Silver Cross employees. Others are independent physicians, not employed by Silver Cross, who utilize, on a timeshare basis, the treatment rooms and other facilities that Silver Cross makes available at Wilmington. *Id.*

5. Silver Cross physicians accounted for 123 of the 138 (or 89%) of the total weekly service care hours provided at the Wilmington during 1997. The remaining 15 hours (or 11%) were provided by independent physicians engaged in the private practice of medicine. *Id.*

D. Use of Homer

1. Silver Cross is entitled to occupy all of the improvement space within Homer pursuant to the terms of a lease between itself and applicant. Applicant Group Ex. No. 16.
2. None of the improvement space within Homer is leased to any entity except Silver Cross. *Id.*
3. Silver Cross provides various health care-related services to area residents at Homer. *Id.*
4. Some, but not all, of the physicians who provide these services are Silver Cross employees. Others are independent physicians, not employed by Silver Cross, who utilize, on a timeshare basis, the treatment rooms and other facilities that Silver Cross makes available at the FMC. *Id.*
5. Silver Cross physicians accounted for 98 of the 125.50 (or 78%) of the total weekly service care hours provided at the Homer during 1997. The remaining 27.50 hours (or 22%) were provided by independent physicians engaged in the private practice of medicine.

E. Use of Essington

1. Silver Cross and its affiliate, Health Service Medical, are entitled to occupy approximately 43% of the Essington total improvement space pursuant to the terms of a lease between itself and applicant. Applicant Group Ex. No. 18, Doc. A.
2. Health Service Medical actually occupies approximately 17% of the total improvement space at Essington; Silver Cross actually occupies approximately 27%. *Id.*
3. Silver Cross and Health Service Medical provide various health care-related services to area residents in the spaces that they occupy. *Id.*
4. Some, but not all, of the physicians who provide these services are Silver Cross employees. Others are independent physicians, not employed by Silver Cross, who utilize, on a timeshare basis, the treatment rooms and other facilities that Silver Cross makes available at the Essington. *Id.*
5. Silver Cross physicians accounted for 149 of the 155 (or 96%) of the total weekly service care hours provided at Essington during 1997. The remaining 6 hours (or 4%) were provided by independent physicians engaged in the private practice of medicine. *Id.*
6. Applicant was actively developing a separate 19% of the Essington building improvement for use as an open MRI facility, as well as OB/GYN and Orthopedic clinics, that were to be used by Silver Cross. *Id.*
7. The remaining 38% of building space within the Essington building was leased to tenants that were either: (a) health care providers who maintained only a minimal

affiliation with Silver Cross; or, (b) commercial entities who were totally unrelated to Silver Cross. *Id.*

8. Applicant is not seeking an exemption for this 38% of the Essington property. Applicant Group Ex. No. 18, Doc. A.

F. Use of NLMC

1. Silver Cross occupies approximately 86% of the NLMC improvement space pursuant to a the terms of a lease between itself and the applicant. The remaining 14% is occupied by a physician engaged in the private practice of medicine. Applicant Group Ex. No. 4, Doc. A.
2. Applicant concedes that this 14% is not in exempt use. Applicant Group Ex. No. 4, Doc. A.
3. Silver Cross provides various health care-related services to area residents in the space that it occupies. *Id.*
4. Some, but not all, of the physicians who provide these services are Silver Cross employees. Others are independent physicians, not employed by Silver Cross, who utilize, on a timeshare basis, the treatment rooms and other facilities that Silver Cross makes available at the NLMC. *Id.*
5. Silver Cross physicians accounted for 164 of the 236 (or 69%) of the total weekly service care hours provided at the NLMC during 1997. The remaining 72 hours (or 31%) were provided by independent physicians engaged in the private practice of medicine. *Id.*

G. Use of MAB

1. Silver Cross is entitled to occupy approximately 39% of the MAB improvement space pursuant to the terms of a lease between itself and applicant. Applicant Group Ex. No. 19, Doc. A.
2. Silver Cross subleases 7% of the space that it is entitled to occupy to the Chicago Institute of Neurosurgery and Neuro Research. Applicant is not seeking an exemption for this 7%. Therefore, Silver Cross actually occupies only 32% of the MAB improvement space that it is entitled to occupy. *Id.*; Applicant Group Ex. No. 19, Doc. A.
3. Silver Cross provides medical services to area residents in the 32% of the MAB improvement space that it occupies. Applicant Group Ex. No. 19, Doc. A.
4. All of these services are provided by physicians and other health care professionals employed by Silver Cross. As such, there are no independent physicians engaged in the private practice of medicine providing services at the MAB. *Id.*
5. Applicant leases 3% of the improvement space within the MAB to Park West Realty (“Park West”), an affiliate of Children’s Memorial Hospital (“Children’s”). *Id.*
6. The Department has exempted property owned by Park West and operated by Children’s from real estate taxation pursuant to the determination in docket No. 94-16-1478. Administrative Notice.
7. Children’s provides health care services to area residents in the portion of the MAB that Park West leases from applicant. Applicant Group Ex. No. 19.

8. The remaining 58% of improvement space within the MAB is occupied by tenants having no affiliation with Silver Cross. Applicant concedes that this 58% of improvement space is not in exempt use. *Id.*; Applicant Group Ex. No. 19, Doc. A.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*, which provides that:

All property of the following is exempt when actually and exclusively used for charitable⁴ or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity

35 **ILCS** 200/15-65(a).

Like all statutes exempting property from taxation, Section 15-65(a) is to be strictly construed against exemption. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). For this reason, all

4. Charitable purposes are ones that, by definition, benefit an indefinite number of people and persuade them to an educational or religious conviction that benefits their general welfare or somehow reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They are also ones undertaken by entities that: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits they dispense. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

doubtful factual questions and other debatable matters must be resolved in favor of taxation. *Id.* Therefore, applicant, which bears the burden of proof in all exemption matters, must satisfy a standard of clear and convincing evidence in order to prove that the relevant statutory exemption applies. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the relevant statutory exemption pertains to "institutions of public charity." The statutory requirements for this exemption are: (1) exempt ownership; and, (2) exempt use. 35 ILCS 200/15-65(a); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968). Only the second requirement is presently at issue, as all of the instant denials were predicated solely on lack of exempt use. Dept. Group Ex. No. 1.

This case raises a very specific exempt use issue, that being whether formulas based on statistical time share data can be applied to identify the extent to which the subject properties are used for "charitable" purposes, as suggested by the applicant. Illinois courts have yet to address this specific issue. However, two Illinois decisions, Evangelical Hospitals Corporation v. Illinois Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1992) and Streeterville Corporation v. Illinois Department of Revenue, 186 Ill.2d 534 (1999), have addressed application of other formulas.

The formula at issue in Evangelical Hospitals Corporation was based on sales ratios. Appellant proposed this formula because, much like the present case, it was using the space in question, a pharmacy, for exempt and non-exempt purposes at the same time. Evangelical Hospitals Corporation at 231-232. The exempt uses were those associated with sales to appellant's own health care facilities; the non-exempt uses were those linked to sales at markup to third parties. *Id.* Because appellant could not ascribe exempt and

non-exempt uses to distinct physical portions of the pharmacy, it proposed a formula which sought to measure the extent of exempt use by applying a formula that compared the percentage of pharmacy sales made to appellant's health care facility to the percentage of pharmacy sales made to the non-exempt third party. *Id.* The court rejected application of this formula on grounds that the sales data failed to establish the actual amount of physical space that the appellant was using for exempt purposes. *Id.* at 232.

In Streeterville, appellant proposed a formula that defined exempt use in terms of the percentage of its personnel that actually parked in the parking garage that it was seeking to exempt. Streeterville, *supra*, at 538. The statute governing exemption of parking lots, Section 9-125 of the Property Tax Code (then Section 19.16 of the Revenue Act of 1939), specifically provides for use apportionment via the following language:

§ 15-125. Parking areas, not leased or used for profit, *when used as part of a use for which an exemption is provided by this Code* and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption..[.]

35 ILCS 200/15-125. (emphasis added).

Section 15-125 does not apply herein because the subject properties are not parking facilities. Furthermore, the provision of the Property Tax Code that governs disposition of this case, Section 15-65(a), does not contain language that allows exemptions to be apportioned according to the extent to which property is used as part of another exempt use. This language cannot be added to Section 15-65(a) by administrative or judicial construct because property tax exemption statutes must be strictly construed in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154

Ill. App.3d 430 (1st Dist. 1987). Therefore, the technical holding in Streeterville, which approved application of the appellant's proposed formula,⁵ does not apply to this case as a matter of law.

However, the following excerpt from the Streeterville court's analysis and explanation of Evangelical Hospitals Corporation, *supra*, is instructive for present purposes:

In *Evangelical Hospitals*, the pharmacy presented evidence regarding the percentage of its *sales* which constituted exempt use. Such evidence says nothing about the amount of *space* which was used for exempt purposes, and thus, could not demonstrate that an "identifiable portion" of the property was used for such purposes.

186 Ill.2d at 538. [Italics as it appears in the original].

This statement clarifies that Streeterville and Evangelical Hospitals are consistent with each other. Both hold that partial exemptions of the type sought by this applicant may be granted only where the applicant clearly and convincingly proves that an "identifiable portion" of the property at issue (i.e. a specific amount of the physical space situated therein) is primarily used for exempt purposes. Evangelical Hospitals Corporation, *supra*, at 231-232; Streeterville Corporation, *supra*, at 538-539. *See also*, Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 66 (1971). Therefore, one must

5. The court accepted this formula, in part, because the parties had stipulated that "74% of the customers parking in the [subject parking] garage received some form of ... discount" from the tax exempt hospital serviced by the garage. Streeterville, *supra*, at 535. Based on this stipulation, the court concluded that "evidence that 74% of Streeterville's customers were hospital personnel establishes that an 'identifiable portion' of the facility was used for exempt purposes." *Id.* at 538. Accordingly, the court concluded that Streeterville was "entitled to a partial tax exemption for that 74% portion of its parking facility which, as agreed, is used by Northwestern Memorial Hospital personnel." *Id.* at 539.

The court's conclusion is that although the applicant could not identify which *specific* parking spaces were being used for exempt purposes, it could, nonetheless receive an exemption for the identifiable amount of physical space associated with the exempt user. This applicant's proposed formula does not make such an association because it is based strictly on time usage. As such, it fails to prove anything about the actual percentage of *physical space* used by Silver Cross.

employ the following two-part analysis in order to determine whether applicant is entitled to the exemption that it seeks: first, has applicant, in fact, successfully identified a specific amount of space that is to be used for exempt purposes; and, second, assuming that applicant has successfully identified such space, is the space so identified primarily used for exempt purposes?

The spaces at issue in this case are subject to time share arrangements. These arrangements create the exact same identification problem that existed in Evangelical Hospitals, only in a different context. The problem arises because the time share arrangements enable the potentially exempt user, Silver Cross, to utilize the very spaces it is seeking to exempt contemporaneously with physicians engaged in the non-exempt, private practice of medicine.

Applicant does not dispute that the private practice of medicine constitutes a non-exempt use. (Tr. pp. 774-76, 98; *See also*, Mason District Hospital v. Tuttle, 61 Ill. App.3d 1034 (4th Dist. 1978)). All of the spaces subject to the time share arrangements are therefore used for exempt (i.e. Silver Cross-related) and non-exempt (i.e. private practice-related) purposes at the same time. Consequently, as in Evangelical Hospitals, *supra*, one simply can not simply divide these spaces into areas of exempt and non-exempt use via conventional methods.

Given this difficulty, applicant proposes to measure the extent of exempt use in each space subject to a time share agreement by applying formulas that measure time usage. For properties in which Silver Cross is not the sole occupant, (Essington, NLMB

and MAB), applicant proposes that following formula, which uses Essington as a demonstrative example, be employed:

FUNCTION	DATA/ COMPUTATIONS	EQUALS
1. Total square footage in improvement	15,931	
2. Square footage occupied by Silver Cross	13,651	
3. Square footage occupied by Silver Cross/ Total square footage in improvement.	13,651/15,931	.857 or 85% of total building improvement occupied by Silver Cross.
4. Number of total hours that all health care providers provided services at NMLC on a weekly basis during tax year in question.	236	
5. Number of hours at Silver Cross health care providers provided services at NLMC on a weekly basis during tax year in question/ Number of total hours that all health care providers provided services at NMLC on a weekly basis during tax year in question equals percentage of Silver Cross's time usage of NMLC during tax year in question.	164/236	.695 or 70%
6. Percentage of exemption is equal to percentage of NLMC occupied by Silver Cross multiplied by percentage of Silver Cross's time usage of NMLC during tax year in question.	.857 x .695	.5956 or 60%

For those properties wherein Silver Cross is the sole occupant (FMC, Wilmington and Homer), applicant would simply multiply the percentage of its time usage during the tax year in question by 100%, which is the percentage of the property that Silver Cross occupies. Thus, as an example, applicant proposes that the exemption for Wilmington be computed as follows:

FUNCTION	DATA/ COMPUTATIONS	EQUALS
1. Total percentage of square footage occupied by Silver Cross	100%	100%
2. Number of hours at Silver Cross health care providers provided services at Wilmington on a weekly basis during tax year in question.	123	
3. Number of total hours that all health care providers provided services at Wilmington on a weekly basis during tax year in question.	138	
4. Number of total hours that all health care providers provided services at Wilmington on a weekly basis during tax year in question.	138	
5. Number of hours at Silver Cross health care providers provided services at Wilmington on a weekly basis during tax year in question/ Number of total hours that all health care providers provided services at Wilmington on a weekly basis during tax year in question equals percentage of Silver Cross's time usage of Wilmington during tax year in question.	123/138	.8913 or 89%
6. Percentage of exemption is equal to percentage of facility occupied by Silver Cross multiplied by percentage of Silver Cross's time usage of Wilmington during tax year in question	100% x .8913	.8913 or 89%

Both of these formulas seek to measure the extent of exempt use by reference to *time* usage. They do not, however, say anything “about the amount of *space* which was used for exempt purposes ...[.]” Streeterville, *supra*, at 538. For this reason, these formulas cannot be applied herein because they are contrary to prevailing precedent in the first instance (*id.*; Evangelical Hospitals Corporation, *supra*, at 231-232) and may potentially provide applicant with an unwarranted windfall in the second.

This prospective windfall arises because applicant's proposed formulas do not equate time with space. *Accord*, Evangelical Hospitals Corporation, *supra*. Consequently, the percentage of exempt use derived via these formulas does not necessarily correspond to the actual amount of space that Silver Cross is using to dispense medical services at the subject properties. Where applicant's formulas yield time percentages that may exceed the actual amount of space used, the resulting exemption will provide applicant with tax savings that could surpass those to which it is lawfully entitled.

For example, under Evangelical Hospitals Corporation, the 89% exemption that applicant seeks for Wilmington must be based on appropriate evidence that Silver Cross is in fact the primary user of 89% of the physical space contained in that facility. Silver Cross, however, may actually be using a lesser percentage of that physical space. Under this scenario, the 89% figure would: (a) unlawfully exempt physical space that, at minimum, applicant did not identify as being in exempt use; and/or, (b) provide applicant with an exemption for space that Silver Cross may not actually use.⁶

The purpose of property tax exemption statutes is to exempt specific physical space that satisfies the requirements of the exemption. Thus, applicant is not entitled to receive whatever tax savings flow from the exemption that it is seeking unless it first sustains its burden of identifying specific areas that Silver Cross is using for exempt purposes. Streeterville, *supra*, at 538-539. Applicant's formulas are legally insufficient to sustain that burden for the reasons identified above. Therefore, any exemptions

6. For example, Silver Cross physicians may primarily use only 50% of the physical space in Wilmington 89% of the time, while the non-exempt physicians use 100% of the same space 11% of the time.

applicant receives herein must be based on alternative methods of proof.

Such alternatives are available with respect to the 32% of the MAB facility actually occupied and used by Silver Cross. This distinctly identifiable space is unique because it is the only one wherein independent physicians do *not* share space with Silver Cross health care providers. As such, Silver Cross is the only entity occupying and actually using this 32%. Consequently, it becomes unnecessary to further divide this 32% according to exempt and non-exempt uses. Therefore, applicant is lawfully entitled to receive an exemption for this 32% of the MAB.

Applicant is also entitled to receive an exemption for that 3% of the MAB which it leases to Park West and its affiliate, Children's Memorial Hospital. In Children's Development Center v. Olson, 52 Ill. 2d 332 (1972), the Illinois Supreme Court held that leasehold interests can be exempted from real estate taxation if: (a) the lessor qualifies as an exempt entity; and, (b) the lessee also qualifies as an exempt entity; and, (c) the lessee uses the demised premises for purposes that would qualify as exempt if the lessee owed the allegedly exempt leasehold. *Id.*

The facts pertaining to applicant's leasehold with Park West mirror those in Children's Development Center, *supra*, because: (a) the applicant-lessor qualifies as an exempt entity; (b) the Department has recognized that the lessee of that leasehold, Park West, and its affiliate, Children's Memorial Hospital, qualify as "institutions of public charity" pursuant to the determination in determination in Docket No. 94-16-1478; and, (c) Children's uses the leasehold for "charitable purposes" consistent with those found exempt in Docket No. 94-16-1478. Therefore, the 3% of the MAB which contains this

leasehold should be exempt from real estate taxation pursuant to Children's Development Center.

Based on the above, I conclude that 35% of the MAB should be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code. Therefore, the Department's determination with respect to the MAB should be modified to reflect that exemption.

The Department's determination with respect to Essington should also be modified, but on different legal grounds. In Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987), the court held that the active development of real estate for use by a charitable entity constitutes exempt use. 157 Ill. App. 3d at 585-587. Applicant was actively developing 19% of the Essington property for Silver Cross's clinical purposes during 1997. Consequently, this 19% should be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code and Weslin Properties. Therefore, the Department's determination with respect to Essington should be modified to reflect such exemption.

In summary, both of applicant's formulas are contrary to current law because they do not equate time usage with physical space. Evangelical Hospitals Corporation, *supra*; Streeterville Corporation, *supra*; Illinois Institute of Technology, *supra*. Consequently, these formulas cannot be used to assess the extent to which any of the physical space situated in the subject properties are used for "charitable" purposes. *Id.* Therefore, those portions of the Department's initial determinations which found that applicant failed to establish the extent to which the subject properties were "exclusively" used by its affiliate, Silver Cross, should be affirmed. However, those portions of the

determinations which denied identifiable portions of the MAB and Essington facilities exemption from 1997 real estate taxes under 35 **ILCS** 200/15-65(a) should be modified as set forth above.

WHEREFORE, for the reasons set forth above, I recommend that:

- A. 100% of real estate identified by Cook County Parcel Index Number 22-29-402-020 not be exempt from 1996 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a);
- B. 100% of real estate identified by Will County Parcel Index Number 17-36-400-042 not be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a);
- C. 100% of real estate identified by Will County Parcel Index Number 05-12-101-017 not be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a);
- D. 19% of real estate identified by Will County Parcel Index Number 06-02-401-002 be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a);
- E. The remaining 81% of real estate identified by Will County Parcel Index Number 06-02-401-002 not be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a);
- F. 100% of real estate identified by Will County Parcel Index Numbers 08-15-314-020, 08-15-314-021, 08-15-314-006 and 08-15-314-007 not be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a);

- G. 35% of real estate identified by Will County Parcel Index Number 07-11-201-034 be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a);
- H. The remaining 65% of real estate identified by Will County Parcel Index Number 07-11-201-034 not be exempt from 1997 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a).

July 8, 2002

Date

Alan I. Marcus
Administrative Law Judge

APPENDIX NO. 1

**DOCKET NOS.
98-PT-022 & 98-PT-0035**

Midwest Community Real Estate Corporation v. Illinois Department of Revenue

COUNTY	SPRINGFIELD DOCKET #	TAX YEAR IN QUESTION	P.I.N.
98-PT-0022			
Will	97-99-71	1997	08-15-314-021
Will	97-99-72	1997	17-36-400-042
Will	97-99-74	1997	08-15-314-006
Will	97-99-75	1997	08-15-314-007
Will	97-99-76	1997	07-11-201-034
Will	97-99-77	1997	05-12-101-017
Will	97-99-78	1997	06-02-401-002
98-PT-0035			
Cook	96-16-1325	1996	22-29-402-020

APPENDIX NO. 2

98-PT-022 & 98-PT-0035

Midwest Community Real Estate Corporation v. Illinois Department of Revenue

COUNTY	SPRINGFIELD DOCKET #	TAX YEAR IN QUESTION	P.I.N.	COUNTY RECOMMENDATION
98-PT-0022				
Will	97-99-71	1997	Part of 08-15-314-021	Full year exemption for entire property
Will	97-99-72	1997	Part of 17-36-400-042	Full year exemption for entire property
Will	97-99-74	1997	08-15-314-006	Full year exemption for entire property
Will	97-99-75	1997	08-15-314-007	Full year exemption for entire property
Will	97-99-76	1997	Part of 07-11-201-034	Full year exemption for entire property
Will	97-99-77	1997	Part of 05-12-101-017	Full year exemption for entire property
Will	97-99-78	1997	Part of 06-02-401-002	Full year exemption for entire property
98-PT-0035				
Cook	96-16-1325	1996	22-29-402-020	“No action”

APPENDIX NO. 3

98-PT-022 & 98-PT-0035

Midwest Community Real Estate Corporation v. Illinois Department of Revenue

COUNTY	SPRINGFIELD DOCKET #	TAX YEAR IN QUESTION	P.I.N.	DEPARTMENTAL DETERMINATION
98-PT-0022				
Will	97-99-71	1997	08-15-314-021	Exemption denied <i>in toto</i> because applicant failed to prove that any part of the property was “used exclusively by Silver Cross Hospital.”
Will	97-99-72	1997	17-36-400-042	Same as above
Will	97-99-74	1997	08-15-314-006	Same as above
Will	97-99-75	1997	08-15-314-007	Same as above
Will	97-99-76	1997	07-11-201-034	Same as above
Will	97-99-77	1997	05-12-101-017	Exemption denied <i>in toto</i> on grounds that “property not exclusively in charitable use”
Will	97-99-78	1997	06-02-401-002	Exemption denied <i>in toto</i> on grounds that “property not exclusively in charitable use”
98-PT-0035				
Cook	96-16-1325	1996	22-29-402-020	Exemption denied <i>in toto</i> on grounds that “property not exclusively in charitable use”